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DEVON CHRISTOPHER WENGER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA

Petitioner,

v.

DEVON CHRISTOPHER WENGER,

Respondent.

Case No.: 4:23-CR-00269-JSW

Judge Presiding: Hon. Jeffrey S. White

**DEFENDANT'S POCKET BRIEF In Re:
COURT ORDER, DOCKET NUMBER 574**

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

Comes the Defendant, Devon Christopher Wenger, by and through undersigned counsel and respectfully submits his Pocket Brief pursuant to this Court's Order of September 9, 2025, Dkt. No. 574.

SUMMARY

At issue is defense counsel's subpoena of the Government's expert witness, Mr. Steve Ijames. The Government initially disclosed Mr. Ijames as an expert witness, informed both defense counsel and the Court of its intent to call him, and retained and compensated him for his services. However, following receipt of the defense expert report prepared by Mr. Paul Sipe, the Government advised that it no longer

1 intended to present Mr. Ijames in its case-in-chief. Notwithstanding the Government's change of position,
2 the defense maintains that Mr. Ijames's testimony is directly relevant to the issues in this case and, based
3 on his prior statements, is expected to be favorable to the defense. Accordingly, the defense seeks to secure
4 his testimony through subpoena to ensure that the jury has the benefit of a full and fair evidentiary record.

5 APPLICABLE LAW

6 The Sixth Amendment requires the Defendant be allowed the right to present a complete defense
7 under the Compulsory Process. Excluding defense evidence or witnesses it chooses that are material and
8 favorable, violates that right. "The right to offer the testimony of witnesses, and to compel their
9 attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's
10 version of the facts as well as the prosecution's to the jury so it may decide where the truth
11 lies." *Washington v. Texas*, 388 U.S. 14, 19 (1967).

12 Under Federal Rule 17(a) authorizes subpoenas to compel witnesses to attend and testify; Rule
13 17(a) authorizes subpoenas to compel witnesses to attend and a subpoena may be quashed only if
14 compliance would be "unreasonable or oppressive."

15 In criminal cases, Rule 16 regulates expert disclosures. It is recognized that courts have broad
16 latitude to regulate expert disclosures to ensure fairness once Rule 16 is triggered. Reports and results of
17 examiners/test are discoverable under Rule 16(a)(1)(F); expert bases and reasoning fall under Rule
18 16(a)(1)(G). Where an expert has produced reports or test results, Rule 16(a)(1)(F) mandates disclosure;
19 where opinions and bases exist, Rule 16(a)(1)(G) ensures the defense can prepare to examine them.
20 Having identified and used the Mr. Ijames in the review and offering a report of his findings, the
21 Government cannot, by declining to call the witness, foreclose the defense's examination of relevant
22 opinions and underlying work. Ordinary evidentiary controls (Rules 401–403 and 702–705) address
23 scope; categorical exclusion undermines the Sixth Amendment and prejudices the defense. *United States*
v. W.R. Grace, 526 F.3d 499, 510–14 (9th Cir. 2008).

24 In the case at bar, Mr. Ijames has been a part of the process of this trial, evidenced from the
25 disclosure and reports he shared. Question is, when will he testify? To now object to having Mr. Ijames
26 be subpoenaed and called by the Defense when the Government has indicated it would not use Mr. Ijames
27 is perplexing when he is available and aware of his participation in the trial. In no way, would the
28 Government be prejudiced by Defense calling Mr. Ijames.

1 Defense must at least make some plausible showing of how [Mr. Ijames'] testimony would be
2 both relevant and material to his defense. *Washington*, 14 U.S. at 23.

3 Mr. Ijames's testimony is both relevant and material. He is qualified to address the considerations
4 a reasonable officer would weigh when confronting a non-compliant felony suspect, particularly in light
5 of accepted tactics and training. In addition, he possesses specialized expertise in the field of less-lethal
6 weapons and munitions, with a focus on the 40mm launcher and its corresponding rounds at issue in this
7 case. His testimony will inform the Court and jury not only on the application of such munitions in the
8 context of felony car stops, but also on their mechanics and operational function.

9 Moreover, Mr. Ijames can provide valuable historical and technical perspective regarding the
10 evolution of less-lethal weaponry, including the transition from wooden projectiles to beanbag and rubber
11 rounds, culminating in the development of the 40mm sponge round that lies at the heart of this case. For
12 these reasons, and as further demonstrated by his curriculum vitae already before the Court, Mr. Ijames is
13 uniquely qualified to offer expert testimony directly bearing on the issues in dispute.

14 Wherefore, Defense Prays that this Court will DENY the Government's request to preclude the
15 defense from calling the expert. Enforce the defense subpoena and permit testimony limited to (1) the
16 expert's testing, methods, observations, results, and conclusions; (2) opinions grounded in materials
17 experts reasonably rely upon; and (3) any reports, bench notes, and data produced or required under Rule
18 16. Address any privilege or scope issues via targeted objections at trial.

19 Respectfully submitted,

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